

1 "here."

2 You may proceed when ready.

3 MS. NGUYEN: Thank you, Your Honor.

4 **DEPUTY CROUCH,**

5 having been first duly sworn, testified as follows:

6 **DIRECT EXAMINATION**

7 BY MS. NGUYEN:

8 Q. Could you please state your name for the
9 record?

10 A. Chris Andrew Crouch.

11 Q. And Deputy Crouch, we see you are with law
12 enforcement. What agency?

13 A. Harris County sheriff's office.

14 Q. How long have you been with the sheriff's
15 office?

16 A. Since 2003.

17 Q. And are you in any particular division
18 right now?

19 A. Yes, patrol.

20 Q. Typically on patrol what do you do every
21 day?

22 A. Answer calls for service, work crashes.

23 Q. Could you explain to the jury what a call
24 for service is?

25 A. Call for service is anytime a family

1 disturbance or somebody is in need of help or
2 shoplifting. It's various types of calls that we get
3 from the public requiring our service.

4 Q. And typically when you first arrive on
5 scene what do you do in a typical investigation?

6 What do you do first?

7 A. Usually you want to speak to the
8 Complainant reporter as far as what's going on.

9 Q. If the suspect is still on scene what do
10 you do?

11 A. Try to, you know, safely assess the
12 situation and try to locate the suspect.

13 Q. Do you secure them at that point once you
14 have located him?

15 A. Yes.

16 Q. Do you recall on September 26th, 2013,
17 where you were dispatched out to?

18 A. Yes.

19 Q. Can you give us that address, please?

20 A. 7112 Deer Creek.

21 Q. Is that located in Harris County, Texas?

22 A. Yes, ma'am.

23 Q. What is the first thing you saw when you
24 arrived?

25 A. It's been so long ago -- couple years ago.

1 It was a female sitting back in a cul-de-sac and
2 believed somebody was inside her residence.

3 Q. And did you make contact with that female?

4 A. Yes.

5 Q. Can you tell us what her name was?

6 A. I believe Ashieki Dixon.

7 Q. Can you tell us what you say her demeanor
8 was when you made contact with her?

9 A. She actually seemed a little afraid as far
10 as kind of amped up like she didn't know what was
11 going on inside her house or residence.

12 MS. NGUYEN: At this time the State
13 moves to admit Exhibit 1, the 911 with business
14 records affidavit on file for at least 14 days.

15 MS. GOOCH: I do have an objection to
16 the hearsay.

17 THE COURT: Just make the objection.

18 MS. GOOCH: To hearsay.

19 THE COURT: Okay.

20 MS. NGUYEN: If I may respond to that,
21 it's not testimonial and it's an excited utterance.

22 THE COURT: Overruled.

23 State's 1 is admitted.

24 MS. NGUYEN: May I publish to the
25 jury?

1 THE COURT: Certainly.

2 (State's Exhibit 1 published.)

3 Q. (BY MS. NGUYEN) Deputy Crouch, when you
4 arrived on scene, again, what was the Complainant's
5 demeanor?

6 A. Like I stated earlier she was a little
7 amped up as far as confused, wasn't really certain
8 who was inside the residence.

9 Q. Can you tell us what she told you regarding
10 who she thought it might have been?

11 MS. GOOCH: Object to hearsay.

12 MS. NGUYEN: Your Honor, it's an
13 excited utterance. She was obviously scared because
14 she didn't know who was inside her residence at that
15 time.

16 THE COURT: Overruled.

17 Q. (BY MS. NGUYEN) Can you tell us who she
18 thought was inside the residence?

19 A. She believed it was Mario Dunn.

20 Q. Okay. Did she tell you about the
21 protective order?

22 MS. GOOCH: Object to relevance and
23 hearsay.

24 THE COURT: Overruled.

25 Q. (BY MS. NGUYEN) Did she tell you about the

1 protective order?

2 A. I don't recall the exact conversation, but
3 I was -- I did research and found out Mario Dunn
4 was -- had a protective order applied.

5 Q. What's that mean that he has a protective
6 order?

7 A. He's not allowed to be within so many feet
8 on the -- I guess the victim that's stated on the
9 protective order.

10 Q. Okay.

11 MS. NGUYEN: Your Honor, at this time
12 the State would move to admit State's Exhibit 2 which
13 is the Magistrate's order for emergency protection.
14 It's not hearsay because it has legal significance
15 and it's like a contract.

16 Tendering to opposing Counsel for
17 inspection.

18 MS. GOOCH: Defense has no objection
19 to the certified copy of State's Exhibit 2.

20 THE COURT: It's a self-authenticating
21 document. So for that purpose I will allow it.

22 MS. NGUYEN: May I approach the
23 witness?

24 THE COURT: Yes.

25 MS. NGUYEN: Thank you.

1 Q. (BY MS. NGUYEN) Deputy Crouch, I'm handing
2 you State's Exhibit 2. Can you tell what you say
3 that is?

4 A. Magistrate's order for emergency
5 protection.

6 Q. Can you tell us what the residence is he's
7 supposed to stay away from?

8 A. According to -- it says "200 feet of
9 residence, to-wit: 7112 Deer Creek Court, Spring,
10 Texas, 77379."

11 Q. Can you tell us on what date this was
12 signed by the Defendant and issued?

13 A. 9/21/2013.

14 Q. And is that before the date that this
15 happened?

16 A. Yes.

17 Q. Can you tell us if the Defendant signed it?

18 MS. GOOCH: Object to the question as
19 to whether or not he knows.

20 THE COURT: He has no personal
21 knowledge. So that's sustained.

22 Q. (BY MS. NGUYEN) Is there a signature there
23 where it says "Defendant's signature"?

24 A. There is a signature.

25 Q. Thank you.

1 So tell us what you did after you made
2 contact with the Complainant?

3 A. I told her to stay where she was and I
4 asked for another unit to check by obviously because
5 we didn't know who was in the residence in case it
6 was a burglar. So we always use caution.

7 So I attempted to knock on the door
8 once I had got back up and then I heard some talking
9 from Mario Dunn. At the time I didn't know it was
10 him though.

11 Q. When you knocked on the door did he open
12 the door?

13 A. No.

14 Q. Did you announce yourself?

15 A. Yes.

16 Q. How many times did you knock and announce
17 yourself?

18 A. Probably a good five minutes.

19 Q. Okay. And I want to a make sure -- did
20 Mario Dunn ever open the door to you?

21 A. No.

22 Q. What were you forced to do?

23 A. Kick the door.

24 Q. Did you have permission from the
25 Complainant to do so?

1 A. The Complainant and my supervisors.

2 Q. And tell us what the Defendant did at that
3 point?

4 A. I kicked the door open and then I saw the
5 Defendant run to the back of the house. Looked like
6 he was going to go out through the sliding glass door
7 and I ordered him to stop and he stopped and got on
8 the floor.

9 Q. Did you arrest him at that point?

10 A. Yes.

11 Q. What did you arrest him for?

12 A. At that time it was violating a protective
13 order.

14 Q. According to the protective order was the
15 Defendant supposed to be there?

16 A. No, ma'am.

17 Q. Do you see the man that you arrested for
18 violating a protective order in the courtroom today?

19 A. Yes, ma'am.

20 Q. Can you identify him by a piece of clothing
21 he's wearing?

22 A. Black jacket and blue tie, blue shirt.

23 MS. NGUYEN: Let the record reflect
24 that the witness identified the Defendant, Mario
25 Dunn.

1 THE COURT: The record will so
2 reflect.

3 MS. NGUYEN: May I approach the
4 witness?

5 THE COURT: Certainly.

6 Q. (BY MS. NGUYEN) Deputy Crouch, I'm handing
7 you State's Exhibit 3. Can you tell us what this is?

8 A. Appears to be a mugshot.

9 Q. Can you tell if it's a fair and accurate
10 depiction of the Defendant that day?

11 A. Yes, ma'am.

12 MS. NGUYEN: Tendering to opposing
13 Counsel for inspection before offering in as
14 evidence.

15 MS. GOOCH: No objection to State's
16 Exhibit 3.

17 THE COURT: All right. It will be
18 admitted.

19 MS. NGUYEN: May we publish?

20 THE COURT: Certainly.

21 Q. (BY MS. NGUYEN) Can you see that, Officer?

22 A. Yes, ma'am.

23 Q. Is this the Defendant on the day of his
24 arrest?

25 A. Yes.

1 MS. NGUYEN: I will pass the witness.

2 THE COURT: It's your witness.

3 **CROSS-EXAMINATION**

4 BY MS. GOOCH:

5 Q. Deputy Crouch; is that correct?

6 A. Yes, ma'am.

7 Q. You have been with the Harris County
8 sheriff's department since 2003, almost 12 years?

9 A. Yes, ma'am.

10 Q. And during that whole time you have worked
11 patrol; is that correct?

12 A. I have been on patrol almost 7 years.

13 Q. Now, is this the first violation of
14 protective order you have ever arrested?

15 A. Arrested for --

16 I have over 300 arrests.

17 Q. Do you know?

18 A. I don't know. I wouldn't be able to give
19 you an accurate answer on that.

20 Q. All right. So when you arrived at the
21 scene you saw Ms. Dixon, correct?

22 A. Yes, ma'am.

23 Q. And you knocked on the door and -- for the
24 person inside to let you in, right, and they did and
25 once you came inside you came to hear Mr. Dunn and

1 you also informed him that he was not allowed to be
2 within 200 feet of the residence per the protective
3 order?

4 A. That's correct.

5 Q. You had no indication he already knew about
6 the order, correct?

7 A. At that time I wouldn't have known that.

8 Q. You wouldn't have known?

9 A. No.

10 Q. So you don't know whether or not he had
11 knowledge prior to this date of the protective order;
12 is that correct?

13 A. Can you --

14 Q. Do you have any knowledge that he knew of
15 this protective order prior to September 26th, 2013?

16 A. Usually.

17 Q. Do you have knowledge that he knew about
18 it?

19 A. Yes.

20 Q. What is your knowledge?

21 A. That when people are issued a protective
22 order they are aware that they have it.

23 Q. Well, you have arrested people for other
24 protective orders, correct?

25 A. I possibly have.

1 Q. And there are different kinds, correct?

2 A. Yes, ma'am.

3 Q. Now, were you there when he was issued this
4 protective order?

5 A. No.

6 Q. So you don't know whether or not he had
7 knowledge of it?

8 A. No, ma'am.

9 Q. And when you arrested him he had to go to
10 the hospital because his blood pressure was really
11 high?

12 A. Yes, ma'am.

13 Q. And how long was he at the hospital before
14 he was booked into the --

15 A. Probably three hours.

16 MS. NGUYEN: Objection; relevance.

17 THE COURT: Sustained.

18 Q. (BY MS. GOOCH) The booking photo was taken
19 after the hospital?

20 MS. NGUYEN: Objection; relevance.

21 THE COURT: You are the one that
22 introduced the booking photo. So that's fine.

23 A. That picture was taken before the hospital.

24 Q. (BY MS. GOOCH) At that time he was
25 suffering from high blood pressure?

1 MS. NGUYEN: Objection; relevance.

2 THE COURT: Sustained.

3 MS. GOOCH: Pass the witness.

4 THE COURT: Do you have anything
5 further?

6 MS. NGUYEN: Nothing further.

7 THE COURT: You can step down.

8 MS. NGUYEN: State rests, Your Honor.

9 THE COURT: We are going to take five,
10 if you follow the bailiff out.

11 (Jury not present; Defendant present.)

12 MS. GOOCH: At this time the defense
13 has motion for a directed verdict because the State
14 has failed to meet its case in showing the Defendant
15 had knowledge of the Magistrate's order. If you look
16 at the Code of Criminal Procedure Article 17.292J it
17 reads that "in order for emergency protection issued
18 under this article is effective upon issuance and the
19 Defendant shall be served with a copy of the order by
20 the Magistrate or the Magistrate's designee in person
21 or electronically and the Magistrate shall make a
22 separate record of service in written or electronic
23 format."

24 At this time the State has failed to
25 show that he has been served and had knowledge of

1 this Magistrate's order at the time of September
2 26th, 2013.

3 *THE COURT:* Any response?

4 *MS. NGUYEN:* We have provided at least
5 a scintilla of evidence for each element that we had
6 to prove including the knowledge element. It says
7 right here on the MOEP: "I certify that I received a
8 copy of this Magistrate's order for emergency
9 protection in open court at the Magistrate's
10 hearing," signed the Defendant September 21st, 2013.
11 It also says, "delivered, mailed or electronically
12 transmitted on September 21st, 2013, to the protected
13 person and address named in this order by the court
14 official." I think that's at least a scintilla of
15 evidence.

16 *THE COURT:* So that motion is
17 overruled.

18 *MS. GOOCH:* If I may be heard, Your
19 Honor?

20 The construing statutory language of
21 Code of Criminal Procedure 172.92 is that he shall be
22 served with a copy. It imposes a duty. Simply put,
23 it's mandatory language in the statute and where a
24 cause of action is created by the statute all
25 statutory provisions are mandatory and exclusive and

1 must be complied with in order to sustain the action
2 under Harris County District Attorney V. Lacafta.

3 The site is 965S.W.2d 568, 569, Texas,
4 Houston, 14th District, 1997. Because the statute
5 language is mandatory and because the State created
6 the cause of action; IE, criminal charges for
7 violating the protective order, its requirement of
8 service and record of service must be complied with
9 to sustain the criminal action against the evidence.

10 There was no evidence in this that
11 this was his signature. All we have -- there has
12 been no proof to show that a handwriting expert or
13 anybody that that is Mario Dunn's signature.

14 *THE COURT:* It shows he was in open
15 court and this was issued and the day and that they
16 gave him a copy, so your objection is still
17 overruled.

18 (Break taken.)

19 *THE COURT:* Any objection to the
20 charge?

21 *MS. NGUYEN:* No objection from the
22 State.

23 *MS. GOOCH:* I do have some objections.

24 My objection to the charge is on the
25 second paragraph where it says that the "person

1 commits an offense if under the order issued under
2 article 17.292 Code of Criminal Procedure the person
3 knowingly, intentionally and with knowledge of the
4 Magistrate's order goes near to the place specified
5 described in the order."

6 What I'm asking is that it tracks the
7 information for the violation of protective order.
8 It states that: "The Defendant, hereinafter" --
9 "Mario Dunn, hereinafter styled the Defendant,
10 heretofore on or about September 26th did then and
11 there unlawfully with knowledge of issuance of the
12 Magistrate's order violate said order."

13 *MS. NGUYEN:* Your Honor, it already
14 tracks the order in the fifth paragraph.

15 *THE COURT:* That's where it's supposed
16 to track it. We don't put the same language in both
17 places.

18 So your objection is overruled.

19 *MS. GOOCH:* I think that --

20 *THE COURT:* It's clearly in the
21 application paragraph. It also doesn't have the
22 address in that second paragraph because that's not
23 where it goes.

24 *MS. GOOCH:* I understand, Judge.

25 *THE COURT:* Are you good otherwise?

1 MS. NGUYEN: Yes.

2 THE COURT: You were good already.
3 I'm asking if she's good otherwise for purposes of
4 the record.

5 MS. GOOCH: Yes, Your Honor.

6 THE COURT: All right. Why don't you
7 bring our jurors back in here.

8 (Defendant present; Jury present.)

9 THE COURT: When we left the State
10 just rested.

11 MS. GOOCH: The Defense rests.

12 THE COURT: Okay.

13 We went ahead and finished working on
14 the Court's charge. So I'm going to read this in a
15 few minutes. I have a tendency to read this quickly.
16 Don't get bogged down with what I said. You are
17 physically going to take this back to read as much as
18 you would like to in your deliberations.

19 Since the State has the burden of
20 proof they have the right to both open and closing
21 arguments. Each side will have 10 minutes to sum up
22 what they think the facts are.

23 At this time I'm going to read the
24 charge.

25 There is a missing paragraph. We are

1 going to excuse you for a little bit and fix it.

2 (Break taken.)

3 (Jury present; Defendant present.)

4 *THE COURT:* I'm going to start from
5 the beginning.

6 (Jury charge read.)

7 *THE COURT:* Basically the exhibit is
8 attached and the last page is the verdict sheet and
9 the foreperson will sign the appropriate blank
10 depending on the verdict.

11 *MS. NGUYEN:* State waives the right to
12 open and reserves the right to close.

13 *MS. GOOCH:* Members of the jury, we
14 spoke not too long ago in voir dire and we talked
15 about whether or not -- where the burden lies and it
16 lies "here" with the State is we talked about if --
17 what they had to prove. They had to prove that he
18 knew that this Magistrate's Order was issued.
19 Remember? We talked about it, and they have to prove
20 that beyond a reasonable doubt. They brought in
21 Officer Crouch. He came and told you that on
22 September 23rd -- September 26th he went to Deer
23 Creek and met Ashieki Dixon and he also saw Mr. Dunn.
24 He said the prosecutor brought forward
25 this Magistrate's order of emergency protection and

1 you can take that back with you and the only thing he
2 said is that it was signed. He doesn't know whose
3 signature "this" is. You don't know whose signature
4 "this" is. It cannot be read. Let's talk about this
5 Magistrate's order of emergency protection.

6 On "here" you see that there's a
7 hearing officer, a Ronald Nichols, who is the
8 Magistrate who can be subpoenaed. Who can come in
9 and testify as to what he did on September 21st,
10 2013. He can come in and testify if Mario Dunn did
11 in fact signed this, but you didn't hear from him.
12 You even heard from Officer Crouch on
13 cross-examination that said that he informed the
14 Defendant that he could not come within 200 feet of
15 the residence.

16 That's all you have heard. So how do
17 you know that Mr. Dunn had knowledge of the issuance
18 of a Magistrate's order? That question lies over
19 "here," and I tell you that you don't know. There is
20 no proof that that's his signature or anything that
21 has his signature on it for that matter. So what do
22 you have? You have Mr. Dunn being at a residence and
23 the police come and he's arrested, but do you know
24 that he had knowledge of the Magistrate's order being
25 signed? That he had notice of it? Remember? We

1 talked about it.

2 Another juror talked about a person
3 being served. You have had no testimony that he was
4 served. You have no testimony of this being his
5 signature. The questions that arise in your head are
6 valid. Well, then why was he there? Why was he
7 arrested? Those questions go to "her," not "him."
8 You all told me. I asked each and every one of you
9 that if he did not take the stand, you would not hold
10 it against him. You all remember? You said, "I
11 would not hold it against him and I will keep the
12 burden on the State."

13 So we have Officer Crouch who came out
14 and did his job and came out and was there, entered
15 the house and arrested him. You have a booking photo
16 that Officer Crouch told you that -- was taken before
17 he went to the hospital and he was taken to the
18 hospital for high blood pressure. You don't have
19 Ms. Ashieki Dixon who the State could have subpoenaed
20 to testify. You don't have the Magistrate who the
21 State could have subpoenaed to come down and testify.
22 You don't even have a document which is a certified
23 document just like "this" that the Magistrate has to
24 make --

25 *MS. NGUYEN:* Objection; facts not in

1 evidence.

2 *THE COURT:* The jury will remember the
3 evidence as they heard it.

4 *MS. GOOCH:* You don't have a docket
5 entry which is a certified --

6 *MS. NGUYEN:* Objection; facts not in
7 evidence, Your Honor.

8 *THE COURT:* She can argue what she
9 thinks you should have introduced, and you can argue
10 what you did introduce. That's kind of what argument
11 is about.

12 *MS. GOOCH:* A certified document that
13 could be entered about this Magistrate, Ronald
14 Nichols, saying that "I served him a copy of this and
15 notified him, read this to him and had him sign it."
16 You don't have that. You don't even know what
17 signature it is "here."

18 In this charge they talk about the
19 information is not evidence of guilt. I submit to
20 you, too, that this certified copy of the MOEP is not
21 evidence of guilt. It's a piece of paper with a
22 signature and you don't even know whose signature it
23 is. Just like there was a mix up with paperwork
24 today with the charge, you don't know if there was a
25 mix up at this time because papers go around.

1 People sign things who sign the wrong
2 piece of paper. You have no beyond evidence -- you
3 have no evidence that this signature on this piece of
4 paper belongs to Mr. Dunn and even though it may feel
5 uncomfortable, you may not like it, but the evidence
6 doesn't show it. The State failed to meet its case.

7 I'm asking that each one of you keep
8 your word, tell the State that if you are going to
9 come and file charges against somebody for violating
10 the protective order and the only thing you bring is
11 the officer who met him on that day who cannot tell
12 you if that's his signature or even if he has been
13 served or been given knowledge of what's in this
14 Magistrate's order of emergency protection, that is
15 not enough to convict because it lies solely with
16 "her." There's other evidence that could have been
17 presented.

18 Was he at the house? He was. Did he
19 have knowledge he wasn't supposed to be there? I
20 submit to you there was no evidence he wasn't
21 supposed to be there. There's no evidence beyond a
22 reasonable doubt that with knowledge of this order
23 that he went there in violation of that and I ask
24 that you hold the State to its burden and tell them
25 that this evidence is not enough to convict somebody

1 of a Class A misdemeanor and find the Defendant not
2 guilty.

3 Thank you.

4 *THE COURT:* Thank you.

5 You may proceed when you're ready,
6 State.

7 *MS. NGUYEN:* Yes, Your Honor.

8 That is their argument? "This" man
9 was inside that woman's home that day. "This" man.
10 He was hiding in there. He had locked the door, and
11 he didn't even answer when the officer tried to open
12 that door. What did he do? He ran. That screams
13 guilt.

14 How do we know that he had knowledge?
15 It says right "here," and I'm going to read it to
16 you. "I certify that I have received a copy of this
17 Magistrate's order for emergency protection in open
18 court at the Magistrate's hearing." This was signed
19 in front of a judge in open court five days before he
20 is in that residence.

21 So we are supposed to believe that
22 this isn't his signature? We are supposed to believe
23 that someone just came, stood in front of a judge,
24 was admonished by a judge and signed this piece of
25 paper and then given this piece of paper that clearly

1 tells him in all caps to stay away from that
2 residence? We are trying to make it very easy for
3 these people to follow the law, but he couldn't do
4 that that day.

5 He couldn't even wait a week. It took
6 him five days, but he was inside Ashieki Dixon's
7 house waiting for her. That's why she's not here
8 today. She's scared just like she was that day when
9 she realized it was possibly her ex-boyfriend inside
10 her residence waiting for her. Ms. Gooch is right.
11 "This" is a piece of paper, and I said it in voir
12 dire.

13 This paper has no power except if they
14 believe that there is some kind of repercussion
15 attached to it for violating it. That's the only
16 thing "this" can do, but sometimes this piece of
17 paper can mean the difference between life and death.
18 I am asking you six today to enforce this piece of
19 paper and give it power by holding this man
20 accountable for what he did.

21 He knew he wasn't supposed to be in
22 that residence that day. He didn't open the door for
23 the police and then he tried to run. He knew. He
24 signed that in open court. If you hold the Defendant
25 accountable for his action today, if you enforce that

1 protective order, you send a message to this man and
2 to the rest of the community that that piece of paper
3 is not just a piece of paper and that there are
4 repercussions for violating it. You also show the
5 countless victims that are protected by orders just
6 like that, that that piece of paper will protect
7 them, that officers just like Officer Crouch will
8 come to their aid and will arrest people for
9 violating it. It also shows Ms. Dixon that this
10 system has not failed her and that she was protected
11 that day.

12 Find the Defendant guilty of violating
13 that protective order.

14 *THE COURT:* At this time you are going
15 to deliberate, if you follow my bailiff.

16 (Break taken.)

17 *THE COURT:* If the Defendant would
18 rise.

19 I understand you have reached a
20 verdict?

21 *THE FOREPERSON:* Yes, ma'am.

22 *THE COURT:* If you will hand it to my
23 bailiff.

24 It says: "We the jury find the
25 Defendant guilty as charged in the information."

1 Do you wish to have the jurors polled?

2 *MS. GOOCH:* Yes, Your Honor.

3 *THE COURT:* Is this your verdict?

4 *THE FOREPERSON:* Yes.

5 *THE COURT:* Your verdict?

6 *THE FOREPERSON:* Yes.

7 *THE COURT:* Your verdict?

8 *THE FOREPERSON:* Yes.

9 *THE COURT:* Your verdict?

10 *THE FOREPERSON:* Yes.

11 *THE COURT:* Your verdict?

12 *THE FOREPERSON:* Yes.

13 *THE COURT:* Your verdict?

14 *THE FOREPERSON:* Yes, ma'am.

15 *THE COURT:* You may be seated.

16 Like I explained this is a two-part
17 trial. So we are taking a break to work on the
18 second part's charge and have you out in a little
19 bit.

20 Follow the bailiff.

21 (Break taken.)

22 (Jury not present; Defendant present.)

23 **PUNISHMENT**

24 *MS. GOOCH:* We change our election to
25 the Judge.